

Remarks

In the official action, the Examiner sets forth an election/restriction requirement asserting that claims 1-12, directed to a semiconductor device/system are directed to a different invention than claims 13-44, directed to a method of making a semiconductor device.

The restriction requirement is respectfully traversed. The Examiner asserts in the official action that the device of the Group I invention can be made by processes different from those of the Group II invention. First, it is noted that it is not enough that the processes be merely "different." Rather, the MPEP sections quoted by the Examiner require that the difference be "material."

Furthermore, the Examiner has not set forth an example of a method which is different than that of claim 13, much less materially different, as required by the Rules of Practice. The example set forth in the last five lines of page 2 of the official action and the first two lines of page 3 of the official action is nothing more than a subspecies of claim 13 as it is dominated by that claim.

Claim 13 sets forth a broad process claim. According to the election/restriction requirement made by the Examiner, claim 13, according to the Examiner's analysis, must be patentable over the method proposed by the Examiner in the last 8 lines of paragraph two.

The Applicant expects the Examiner to use a consistent test with respect to what matters are obvious and what matters are unobvious throughout the prosecution of this application. Since the Examiner is adopting a particular standard for obviousness in this case in terms of the election/restriction requirement, the Applicant will expect that the same test be used throughout the prosecution of this application if the Examiner does not withdraw the election/restriction requirement made in the official action.

Since the Examiner has not shown that the product, as claimed, can be made by another

and materially different process than that claimed, the Examiner is requested to withdraw election/restriction requirement.

Since the Rules of Practice require the Applicant to at least provisionally elect one of the two groups for examination in this application, the Applicant hereby provisionally elects the claims of Group II, namely claims 13-44. However, for the reasons indicated, the Examiner is respectfully requested to examine all the claims pending in this application.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents

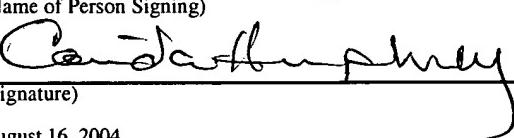
POB 1450, Alexandria, VA 22313-1450 on

August 16, 2004

(Date of Deposit)

Corinda Humphrey

(Name of Person Signing)



(Signature)

August 16, 2004

(Date)

Respectfully submitted,

  
Richard P. Berg  
Attorney for Applicants  
Reg. No. 28,145  
LADAS & PARRY  
5670 Wilshire Boulevard, Suite 2100  
Los Angeles, California 90036  
(323) 934-2300